PATENT APPLICATION
Do. No. 2705-155

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Gregory W. Goodknight		
Confirmation No.:	4235		
Serial No.:	09/773,393	Examiner:	Donald L. Mills
Filed:	January 31, 2001	Group Art Unit:	2616
For:	PACKET TELEPHONY ACROSS THE PUBLIC SWITCHED TELEPHONE NETWORK		
Date:	February 28, 2007		

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

This review is requested for the reason(s) stated on the attached sheet(s). Note: no more than five (5) pages may be provided.

I am the:

☐ applicant/inventor
☐ assignee of record of the entire interest
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed)
☒ attorney or agent of record
☐ attorney or agent acting under 37 CFR 1.34

Total of 4 forms are submitted.

Customer No. 20575

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

Julie L. Reed

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PATENT APPLICATION
Client Seq. No. 3658
Do. No. 2705-155

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ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE

The Examiner is reading a limitation into the claims that is not there, with regard to the 35 USC 112 rejection.

The Office Action mailed November 28, 2006, stated, "However, the converter acts to convert the packet data stream to an altered data stream…Since the converter has already converted the packet data stream to the altered data stream, it would not be possible to transmit the packet data stream in its original format.'

In claim 22, the convert does not act. The claim language states, "a converter to receive a packet data stream intended for a packet domain and to convert the packet data stream into an altered data stream…" The converter does not necessarily perform the conversion. As the invention as claimed is directed to a converter that converts the packet data stream into an altered

data stream only if the device at the other end of the connection is a non-packet device, reading a limitation into the claim that would require the converter, as an element of a device, to act, results in an overly narrowing reading of the claim and the scope of the invention.

With regard to claim 27, there is no requirement that the packet stream is exclusive of the altered data stream. The converter initially converts the packet data stream into the altered data stream and transmits it with signals that will allow the converter to determine if the device on the other end is a packet device. If the other device is a packet device, the converter sends the packet data stream, not the altered data stream.

These claims are not indefinite, and are amply supported in the specification, such as at pages 3 and 4.

The Bhagavath reference does not teach the invention as claimed.

In Bhagavath, however, both the modem 102 and the modem 104 are xDSL devices, and the line is a DSL device. There is no need for determining whether the devices are packet or 'nonpacket' devices, as they are both DSL. The only determination that occurs in the system disclosed in Bhagavath is the rate determination to be used between the two DSL devices. Bhagavath does not teach a controller to *determine, using signals received from one of the other network devices, whether the other network device is a packet device that can receive packet data*...The devices 'know' each other at least to the point that they are both DSL devices.

Bhagavath does not teach an initial connection through the modems that converts the data and then changes to the modems not converting the data if the device on the other end doesn't require the conversion. Indeed, as stated in the office action, "modem 102 receives TCP/IP/Ethernet data packets from the customer, which must be converted to and from xDSL format..." All data going through the modem is converted, whether the other end device would

need it or not. The reference does not teach a controller to "*send the packet data stream to the other network device, if the network device determines that the other network device is a packet device that can receive packet data…*" and, *send the altered data stream to the other network device, if the network device determines that the other network device is not a packet device and cannot receive packet data.* The modem does one or the other in Bhagavath, as the modem works in a homogenous network and knows the other devices are all DSL devices.

The combination of Bhagavath with Sebestyen does not teach the invention as claimed. The combination is premised on the argument that Bhagavath teaches all of the limitations of the parent claims 22 and 27. As discussed above, Bhagavath does not. Sebestyen does not overcome this deficiency.

The Examiner did not address the Applicant's arguments.

Claims 22 and 27 were added in response to the office action mailed June 19, 2006. Applicant set forth arguments against Bhagavath in light of the previous rejection based upon Bhagavath. However, the Examiner did not address them, so Applicant is unsure how the Examiner is reading the reference to find disclosure of the claim elements that do not appear to be present in Bhagavath.

The Applicant also asserts all arguments made previously, whether or not explicitly discussed herein, to preserve the right to assert these arguments in the Appeal Brief.

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